

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 106 of 2000

with

FIRST APPEAL No 323 of 2000

and

CIVIL APPLICATION No 3333 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

and

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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VILUBEN JHALEJAR CONTRACTOR

Versus

STATE OF GUJARAT  
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Appearance:

1. First Appeal No. 106 of 2000  
MR YN OZA, SR. ADVOCATE WITH MR AMAR N BHATT for Appellant  
MR SJ DAVE, AGP for Respondent
2. First Appeal No. 323 of 2000  
MR SJ DAVE, AGP for Appellant

CORAM : MR.JUSTICE M.H.KADRI

and

MR.JUSTICE C.K.BUCH

Date of decision: 07/07/2000

C.A.V. JUDGEMENT

( Per: M.H. Kadri, J. )

1. First Appeal No.106 of 2000 is filed under Section 54 of the Land Acquisition Act, 1894 (hereinafter referred to as the "the Act" ) read with Section 96 of the Code of Civil Procedure, by the original claimants claiming enhanced compensation for their acquired land, challenging the judgment and award dated January 31, 2000 passed by the learned District Judge, Panchmahals at Godhra, in Land Reference Case No.7 of 1985.

1.1 The appellant-State of Gujarat has filed First Appeal No.323 of 2000 challenging the judgment and award of the learned District Judge, Panchmahals at Godhra, in Land Reference Case No.7 of 1985, by which the learned District Judge determined the market value of the acquired lands of claimants situated at town Santrampur, District Panchmahals at the rate of Rs.134/- per square metre as on February 15, 1979.

1.2 As both the appeals relate to the challenge of the judgment and award of the learned District Judge in Land Acquisition Case No.7 of 1985 and as common question of facts and law are involved in these appeals, we propose to dispose of them by this common judgment.

2. The Executive Engineer, Rehabilitation Division, Godhra, by his letter dated January 7, 1978, sent a proposal to the State Government to acquire lands of town Santrampur as the same were coming under submergence of water of Kadana Jalagar Yojna due to logging of water of Kadana Dam. Said proposal was scrutinized by the State Government and preliminary notification under Section 4(1) of the Act was published in the Government gazette on February 15, 1979. Individual notices were served on the claimants. After following usual procedure under Section 5-A and 5-A (2) of the Act, a declaration under

Section 6 of the Act was made which came to be published in the Government gazette on October 13, 1980. The corrigendum to the declaration under Section 6 was made which came to be published in the Government gazette on March 5, 1982. The claimants were served with the notices under Section 9 of the Act. In response to the notices as stated above, the claimants claimed compensation at the rate of Rs.50/- per square feet for their acquired lands. The Land Acquisition Officer on the basis of material produced before him made his award under Section 11 of the Act on March 3, 1982 and offered market price of the acquired lands ranging from Rs.35/- to Rs.60/- per square metre.

2.1 The claimants were of the opinion that the compensation offered by the Land Acquisition Officer was grossly inadequate because the acquired lands were already non-agricultural lands and were situated in the outskirts of town Santrampur, which was fully developed area. The claimants, therefore, filed application under Section 18 of the Act requiring the Land Acquisition Officer to refer the application to the District Court Panchmahals for the determination of the market value of the acquired lands. Accordingly, the application filed by the claimants was referred to the District Court Panchmahals at Godhra which came to be numbered as Land Acquisition Case No.7 of 1985. In the Reference Application the claimants contended that all the 16 plots acquired were situated adjoining to each other and were abutting on the main road. It was claimed that J.H.Mehta High School, Government Rest House, officers' quarters, garden and other residential premises were situated near the acquired land and acquired land could have been sold for residential purpose to any Cooperative Housing Society. It was claimed that the acquired land was known as Old Distillery Compound wherein the ancestors of the claimants were running distillery which was closed after coming into force of the Bombay Prohibition Act, 1949. It was further claimed that on the acquired lands, ice factory, pulse and rice mills were already in existence when the lands came under submergence of the waters of Kadana Jalagar Yojna. Before the Reference Court the claimants claimed compensation of their acquired lands at the rate of Rs.200/- per square metre which was subsequently amended and enhanced to Rs.250/- per square metre.

2.2 The State of Gujarat filed written statement at Exh.15, inter-alia contending that the Land Acquisition Officer had taken into consideration the prevailing market price of the acquired land on the date of issuance

of notification under Section 4 (1) of the Act and had awarded just and adequate compensation. It was further averred that the Land Acquisition Officer had taken into consideration the sale deeds which reflected the market price of the surrounding lands, prior to the date of the issuance of notification under Section 4 (1) of the Act. The opponent further claimed that the compensation claimed by the claimants at the rate of Rs.250/- per square metre was highly exaggerated looking to the situation of the acquired land and the market price of the adjoining land prevailing on the relevant date, and therefore, the application be dismissed with costs.

2.3 The record indicates that Land Acquisition Case No.7/85 was placed for hearing before the learned Extra Assistant Judge, Panchmahals at Godhra, who on rival assertion of the parties framed issued at Exh.13. Thereafter, the above Reference was transferred to the Court of District Judge, Panchmahals at Godhra. The claimants to substantiate their claim for enhanced compensation, examined one of the claimants namely Barjorbhai Jalejar Contractor at Exh.30. The witness claimed that all the acquired lands were converted into non-agricultural use since many years, wherein ancestors of the claimants were carrying on business of distillery, ice factory, rice and pulse mills. He claimed that Taluka Santrampur was consisting of 599 villages and was the biggest taluka of the Gujarat State; that Santrampur was the headquarter of the taluka wherein all Government offices were situated. He further claimed that the acquired lands were situated on the bank of river Suki and were adjacent to Government Rest House. He further claimed that Santrampur-Godhra Highway was passing, near the acquired lands. He claimed that before the lands were placed under acquisition, the area known as Pratappura, in which lands were situated, was already developed as compared to the locality known as Godhra Bhagol. He deposed that in 1949 due to introduction of Bombay Prohibition Act, the distillery was closed, and thereafter the ancestors of the claimants had continued the business of rice and pulse mills. It was stated that rice and pulse mills were situated on the vast area covering about 24,000 square metres of the acquired lands. He stated that the acquired lands were fully developed and could have been sold to Cooperative Societies for construction of residential houses. He further stated that due to construction of Kadana Dam and due to water logging which had caused submergence of the acquired lands, the development of Pratappura had practically stopped and the development was shifted to the area known as Godhra Bhagol. The witness during his

deposition produced documentary evidence such as certified copies of the property card maintained by City Survey and sale deeds of adjoining lands. The witness during his deposition also referred to sale deeds in respect of city survey No.1177 which was executed on December 20, 1978. However, no witnesses were examined to prove the sale deeds produced by the claimants. The evidence of claimants' witness Barjorbhai Jalejar Contractor thus indicated that the acquired lands which were situated in the area known as Pratappura were developed lands for which N.A. permission was already obtained since many years prior to the date of the acquisition. The evidence of this witness also indicated that after submergence of the acquired lands, the development in Pratappura had stopped and the area known as Godhra Bhagol had picked up development. The record indicated that the opponent did not lead evidence, either oral or documentary before the Reference Court. The learned District Judge by his judgment and award dated April 16, 1996 partly allowed the Reference Application filed by the claimants and determined the market value of the acquired lands situated in Pratappura area as on February 15, 1979, at the rate of Rs.225/- per square metre which was challenged by the State of Gujarat by filing First Appeal No.5041/96. The above numbered First Appeal came to be heard by the Division Bench ( Coram : M.R.Calla & R.P.Dholakia, JJ.) and the Division Bench by its judgment order dated May 11, 1999, allowed the First Appeal by quashing and setting the award of the District Court and remanded the case to the Reference Court as the market value determined by the Reference Court was Rs.225/- per square metre, whereas the claimants had claimed the compensation for their acquired lands at the rate of Rs.200/- per square metre. The Division Bench further held that the sale deed which was produced before the Reference Court was not duly proved in the eye of law as neither the vendor nor the vendee of the sale deeds were examined before the Reference Court. Thus, the Division Bench was of the opinion that the Reference Court had taken into consideration the sale deed which was not duly proved in the eye of law, and therefore, the entire judgment and award based on document which was otherwise not admissible in law which was made basis for the purpose of determination of the market value of the acquired lands. To do substantial justice and to award just and fair compensation to the claimants, the Division Bench remanded the Reference Application to the District Court for deciding it afresh after affording reasonable opportunity to both the sides for producing the evidence and deciding the Reference denovo in accordance with law after affording an opportunity to lead evidence to both

the sides.

3. After the remand of the Reference Application to the District Court, the claimants Barjorbhai Jalejar Contractor was again examined on October 10, 1999. He deposed that Kadana Dam was constructed in the year 1968 on the river Mahisagar; that after the construction of the dam, there were heavy floods in the year 1973 and due to heavy floods, their lands were submerged under the water. He deposed that the height of the dam above the sea level was 419 feet, whereas height of water due to floods had risen up to 423 feet. He also deposed that there were heavy floods in the year 1976 and the acquired lands were again submerged under the waters of Kadana Dam. A representation was made to the State Government to acquire the lands as the lands were coming under submergence due to frequent heavy floods and water logging. He stated that the State Government had resolved that lands which were upto the height of 434 square feet of sea level should be placed under acquisition. He gave description of the acquired lands and stated that the lands were already developed wherein business activities of distillery, rice and pulse mills were being carried on. He also stated that many residential houses were situated on the acquired lands and the possession of the acquired lands was taken by the State Government in March, 1978. He claimed that all the acquired plots were of even lands wherein facilities such as electricity, water and roads existed. He deposed that the lands were already used before the acquisition for the purpose of residence and running industries. He further stated that the survey No.1177 of the same town was sold in December 1978 at the rate of Rs.270/- per square metre. He claimed that after the lands of area Pratappura were placed under acquisition, the development in Santrampur Town had shifted towards the area known as Godhra Bhagol. In the cross-examination the witness deposed that lands of survey No.1177, were situated in the residential locality known as Godhra Bhagol, which was not fully developed as compared to Pratappura area. He deposed that due to acquisition of the lands rice and pulse mills were closed in the year 1978. He admitted that river Suki was flowing between the area Pratappura and Godhra Bhagol. He also deposed that the area of the acquired lands was very large, but it was connected by two roads one leading from temple of Hanumaji, whereas the other was from Fatehpura. In the cross-examination the witness also deposed that in the locality of Pratappura, many cloth shops were also situated. He denied that the price of land in the area of Godhra Bhagol was higher than the lands of Pratappura.

3.1 The claimants after the remand examined Moinudin Sadrumiya Shaikh who was serving at Santrampur Municipality at Exh.112. The evidence of this witness suggests that till the year 1978, Pratappura was fully developed area wherein Government quarters, High School, office of District Panchayat, Panchmahals were situated. He deposed that because of the acquisition of the lands, the development in Pratappura area had practically stopped and the development had shifted towards Godhra Bhagol. The witness during his deposition produced certified copy of the assessment with regard to the new houses which were constructed in the area known as Godhra Bhagol between period 1974-75 to October 1999. The witness emphatically deposed that the situation of the lands placed under acquisition was better than the lands which were not acquired of the same area Pratappura. The evidence of this witness recorded during the cross-examination also indicated that Santrampur Taluka was the biggest taluka of the State of Gujarat. The evidence of this witness further indicated that after the acquisition of the lands of area Pratappura, there was not much development of the said area and the development had shifted towards the area which was known as Godhra Bhagol. In short, the evidence of this witness shows that the acquired lands were fully developed having facilities like electricity, water drainage, roads etc., which were being used for residential, agricultural and commercial activities.

3.2 After the remand, the claimants examined Jivrajbhai Sundarlal Pandit at Exh.144. Said witness is the husband of vendee Saraswatiben who had purchased the land of survey No.1177 admeasuring 46.30 square metres, situated in the area Godhra Bhagol of Taluka Santrampur on December 20, 1978 for a total consideration of Rs.20,000/-. The evidence of this witness indicated that prior to execution the sale deed Exh.145 with respect to lands and house situated on survey No.1177, negotiations for sale had taken place before twelve months and thereafter eventually the sale deed was executed on December 20, 1978, which was registered before the Sub Registrar, Lunawada. The witness deposed that he was fully conversant with the sale transaction i.e. Exh.145 and was present when it was executed and when it was registered at the office of Sub Registrar. The witness during his deposition also identified the signature of two attesting witnesses to the sale deed Exh.145. The witness Jivraj Sundarlal Pandit in paragraph 4 of his deposition, claimed that when sale deed Exh.145 was executed in December 1978, the area of Godhra Bhagol was

not fully developed, whereas the area of Pratappura was having more population and was fully developed area. He further deposed that the price of lands of the area of Pratappura was higher than the lands of Godhra Bhagol. During the cross-examination, the witness deposed that when the land of survey No.1177 was purchased, house having one room was already in existence and remaining land was open. The witness denied the suggestion that sale deed Exh. 145 was not a transaction between a willing buyer and willing purchaser. He denied the suggestion that higher price was paid for the land and house situated on survey No.1177 which were purchased by sale deed exh.145. On the contrary the evidence of this witness indicated that the price of the land with superstructure of Survey No.1177 was arrived at with the help of 5 persons. The witness denied that he was not present and was not conversant with the sale transaction. The evidence of this witness indicated that Exh.145 was genuine sale deed executed on December 20, 1978 between his wife Saraswatiben and vendor Kanaiyyalal Sindhi. In our opinion, this witness was competent to depose and to prove the contents of sale deed Exh.145.

3.3 After the remand of the Reference Case No.7/85, the opponents did not examine any witnesses nor produced documentary evidence before the Reference Court.

4. The Reference Court on overall appreciation of oral as well as documentary evidence and after hearing the arguments of the learned advocates of the parties deduced that sale deed Exh.145 was relevant and comparable to ascertain the market value of the acquired lands, but observed that land of sale deed Exh.145 was situated in another area i.e. Godhra Bhagol and the sale deed was in respect of very small area of 46.30 square metres of land. The Reference Court to determine the market value of the present acquired lands did not take into consideration previous award of the learned Assistant Judge, Panchmahals at Godhra, rendered in Land Reference Case No.273/85, decided on November 29, 1997 produced at Exh.150, which was in respect of acquired lands of the same area Pratappura which came to be acquired in the year 1984, wherein the Reference Court had determined the market value of the acquired lands at the rate of Rs.163/- per square metre as on May 3, 1984. The learned District Judge was of the opinion that as previous award Ex.150 was challenged by the State of Gujarat by filing First Appeal No.2338/98 against the determination of market value by the Reference Court which was pending on the date of passing of the impugned award and therefore it cannot be said that the said previous award had become final. The record of First Appeal indicates that the claimants have filed Cross Objection No.277 of 1999 in First Appeal No.2338 of 1998 for enhancement of compensation.



Therefore, in our view the Reference Court was justified in not placing reliance on the award Exh.150 for the determination of the market value of the present acquired lands, on the ground that the said award had not become final, more particularly when the evidence in the nature of sale-deed Exh.145 was produced on the record in the Reference Court. The Reference Court deduced that award of L.R. No.273/85 (Ex.150), was not previous award as the notification under Section 4(1) of the Act in respect of acquired lands of award Exh.150 was published after 5 years of the notification of the present acquisition. The Reference Court further deduced that if reliance is placed on sale deed Exh.145 in respect of smaller area of lands, appropriate deduction and deduction such as the time and expenses required for formation of the lay out the period for which the money would be locked up in the investment and the waiting period as also for the reduced price for the lands and when the lump sum payment is made, are also required to be considered. On the abovesaid reasons the Reference Court observed that it can reasonably be concluded that the lands under acquisition would have fetched at least Rs.200/- per square metre. The Reference Court deduced that if the lands were not acquired and if the claimants intended to convert the entire lands into small plots for residential purpose, the claimants would have incurred development charges which may vary between 33 % to 53 % as per the decision of the Supreme Court in 1996 (3) SCC 776 Smt. Basavva and others vs. Special Land Acquisition Officer and others, further deducted 33 % towards development charges and determined the market value of the present acquired lands at the rate of Rs.134/- per square metre. The Reference Court did not award statutory benefit under Section 23 (1A) of the Act because the award by the Reference Court was made prior to coming into force of the amended Act of 1984. However, the Reference Court extended statutory benefits of solatium under Section 23 (2) and interest as per amended Section 28 of the Act which has given rise to filing of these appeals by the claimants and the State of Gujarat.

5. Learned senior advocate Mr. Y.N.Oza, who appeared on behalf of the original claimants and learned A.G.P, Mr. S. J. Dave has taken us through the entire record and proceedings and paper books supplied by the learned counsel for the claimants which included relevant evidence and documents. Learned senior advocate Mr. Oza has argued that it is not an absolute proposition of law that in all cases where market value of large area of land is to be determined by basing on the price of the sale with respect of small plots of land, a suitable deduction should be made. Learned counsel for the claimants further submitted that if the lands of sale deed covering small plots of land is situated in a developed area, no deduction should be made for the purpose of ascertaining the market value covering large area which was already developed. In support of

the submission, learned senior counsel has placed reliance on the decision of Bhagwahula Samanna and Ors. vs. Special Tahsildar and Land Acquisition Officer, Vishakhapatnam Municipality, Vishakhapatnam (1991) 4 Supreme Court Cases, 506. Learned senior counsel Mr. Oza therefore urged that the claimants had adduced sufficient evidence that the acquired lands were fully developed wherein commercial activities were carried on prior to the date of the acquisition and the Reference Court was not justified in applying deduction twice on the ground of acquired lands having large area and secondly on the ground of development charges. Learned senior counsel further urged that out of the acquired lands some plots were covering small area where residential houses were in existence, and therefore, also the Reference Court ought not to have applied the principle of deduction on the ground of acquired lands having large area and on the ground of development charges. Learned counsel for the claimants stressed that sale deed Exh.145 which was in a fully developed area of Godhra Bhagol was most relevant and comparable for the ascertainment of the market value of the present acquired lands which was also situated in a fully developed area. It is stressed by learned counsel for the claimants that sale deed Exh.145 was duly proved by the husband of vendee Sarasvatiben and the husband was conversant and had actually taken part in the sale transaction. It is further claimed by the learned senior counsel for the claimants that sale deed Exh.145 was the genuine sale deed between the willing buyer and willing purchaser and the market value of which reflected that the land bearing survey No.1177 of sale deed Exh.145 was sold at the rate of Rs.270/- on December 20, 1978. Learned senior counsel further submitted that the present acquired lands were situated in most developed area having all the advantages and potentiality, and therefore, the claimants should be awarded compensation for the acquired lands at the rate of Rs.250/- per square metre. Learned senior counsel argued that all these aspects be taken into consideration and the appeal filed by the claimants be allowed and the appeal filed by the State of Gujarat should be dismissed.

6. Learned Assistant Government Pleader Mr. S.J.Dave on the other hand has submitted that sale deed Exh.145 was not duly proved in the eye of law as neither vendee nor vendor were examined. It is submitted that the husband of vendee Sarasvatiben was not a party to the sale transaction and had not attested the sale deed Exh.145, and therefore, no reliance can be placed on sale deed Exh.145 for ascertaining the market value of the present acquired lands. Learned counsel for the

Government submitted that where large extent of lands were acquired, sale transaction in respect of small extent of lands can be relied upon, but only after making appropriate and suitable deduction for formation of roads and providing of other amenities and the period for which money would have been locked up in the investment and the waiting period as also for the reduced price of the land and lump sum payment to be made. Learned counsel for the Government in support of his arguments has placed reliance on the decision of Land Acquisition Officer, Revenue Divisional Officer, Chittoor, vs. Krishnamachari and others, A.I.R. 1998, Supreme Court, 781. Learned counsel for the Government submitted that for ascertaining the market value of large track of lands, sale transaction of small area is relied on, then there should be deduction of 53 % from the price fetched for smaller area. Learned counsel for the Government submitted that the deduction of at least 50% from the sale price of sale deed Exh.145 be made on settled principles as propounded by the Supreme Court in various decisions, and therefore, the claim for enhancement of compensation should not be entertained. Counsel for the Government further submitted that the claimants had not adduced sufficient evidence by producing sale deed of comparable lands. He further submitted that sale deed Exh.145 was in respect of very small area of land admeasuring 46.30 square metres and was situated in a different locality which was having more development as compared to locality of the acquired lands. Counsel for the Government further submitted that the claimants' claim for enhanced compensation on the ground that the land was having potentiality and they could have sold it to a Housing Society for the purpose of construction of residential premises is against the settled principles of law. Counsel for the Government submitted that for ascertaining market value of the acquired lands, future potentiality should not be looked into. It is submitted that the claimants must prove that the acquired lands and the lands covered by sale transaction Exh.145 was having similar area, having potentiality and same advantageous features, which evidence was lacking in the present case. In the alternative, learned counsel for the Government contended that the burden is on the claimants to prove by acceptable evidence for higher compensation and in the present case when there was acquisition of large extent of land, no reliance can be placed on sale deed Exh.145, relating to small piece of land. Counsel for the Government therefore, submitted that when the claimants had failed to adduce sufficient evidence with regard to comparable sale instances, the appeal filed by the claimants should be dismissed. It is further contended

that the sale deed Exh.145 which was in respect of small parcel of land which was situated within Municipal limits in a developed area and at a distance cannot be called a comparable sale instances to determine the market value of the present acquired lands, and therefore, Reference Court had committed an error in placing reliance on the sale deed Exh.145 for ascertainment of market value of acquired lands. Counsel for the Government also submitted that in all 16 plots of the ownership of the claimants were placed under acquisition and majority of the plots were having small area and having distinguishing features, the Reference Court had erred in awarding compensation at uniform rate in respect of all plots. Counsel for the Government placed reliance on the decision of M/s Printers House Pvt. Ltd. vs. Mst. Saiyadan (deceased) by L.Rs and others, A.I.R. 1994 SCC 1160

7. Learned Assistant Government Pleader Mr. Dave while arguing First Appeal No.323 of 2000 which is filed by the State of Gujarat challenging the determination of the market value at the rate of Rs.134/- per square metre, submitted that the Land Acquisition Officer had referred sale-instances of the same Town wherein the prevailing market rate of lands of Town Santrampur on the relevant date was not more than Rs.60/- per square metre, whereas the Reference Court had awarded compensation at the excessive rate of Rs.134/- per square metre. Learned Assistant Government Pleader Mr. Dave submitted that the award of the Reference Court was excessive and passed without any reliable evidence except the sole sale transaction relied on by the claimants produced at Exh. 145 which was in respect of a very small area having 46.30 square metres and therefore the appeal filed by the State of Gujarat be allowed and the appeal filed by the claimants be dismissed with costs.

8. One of the claimants, namely Barjorbhai Jalejar Contractor Exh.30 had described the situation and the development which had taken place in Pratappura locality where the acquired lands were situated. As per the oral evidence of the witness, Pratappura area was fully developed and many shops dealing in cloth were situated near the acquired lands. His testimony also indicated that many residential houses and Government offices and educational institutions were established near the acquired lands. The acquired lands were having facilities of electricity, water and roads. It is borne out from his evidence that the claimants' ancestors were carrying on business of distillery till 1949 and thereafter, they had started business of pulse and rice

mills on the acquired lands. It is an admitted fact that the acquired lands were converted into non-agricultural use since many years prior to the acquisition. In nut shell, the acquired lands were fully developed before the acquisition. The record also indicated that after the acquired lands were submerged in the water of Kadana dam, the development of the area of Pratappura had shifted to the locality known as Godhra Bhogal. The Land Acquisition Officer in his award dated March 5, 1982 had also given the description of the acquired lands by stating that the acquired lands were situated in a most developed area and were having potentiality.

9. The claimants, to substantiate their claim of the acquired lands at the rate of Rs.250/- per square metre, had produced sale deed of Survey No.1177 at Exh.145. The sale transaction of Survey No.1177 had taken place on December 15, 1978 for a consideration of Rs.20,000/-. The area of sale deed Exh.145 was approximately 46.30 square metres. The Land Acquisition Officer, in his award, had also referred to the said sale deed at Sr.No.6 and had observed that the price per square metre of the said sale deed was Rs.270/-. To prove the sale deed Exh.145, the claimants had examined Jivraj Sundarlal Pandit who is the husband of the vendee Saraswatiben at Exh.144. He deposed that prior to execution of the sale deed Exh.145, the negotiation for the purchase of the land with Super-Structure of Survey No.1177 with the original owner Kanaiyyalal had taken place before one year and after ascertaining the prevailing market rate, the sale deed Exh.145 was executed on December 15, 1978. In paragraph 3, the witness specifically deposed that he was fully conversant with the sale transaction and had remained present at the Sub-Registrar's Office at Lunawada on December 20, 1978 when the document was duly registered under the provisions of Registration Act. The submission of the learned counsel for the Government that the sale deed Exh.145 was not proved as neither the vendor nor the vendee were examined, in our opinion, deserves to be rejected. In *Maharao Shri Madansinhji vs. State of Gujarat* through Deputy Collector, Western Division, Nakhatrana, Kutch AIR 1969 Gujarat Page 270, the Division Bench has ruled that in determining the market value of acquired lands, the best evidence is the sale transaction which has taken place of the adjudicating land in the near proximity of time to the issuance of Notification under Section 4(1) of the Act. While dealing with the question whether the sale deed produced by the claimants wherein the vendor or the vendee was not examined but the person who was conversant with the sale deed was examined, the Division Bench held

as under:-

"The proof of any such contents of the deed or about the transaction relating to their property can best be offered by examining the parties to that deed or the transaction was any person who knew about the same or tried about the transaction" (emphasis supplied).

9.1 In yet another decision in Collector of Panchmahals vs. Desai Keshavlal Panalal AIR 1969 Gujarat Page 276 = (1969) 10 GLR Page 931, the Division Bench ruled as under:-

"Before such instances of sale can be considered, there must be material evidence either by the production of the sale deeds or by examining the parties to the deeds or persons having knowledge of the sales, to prove that the sales are genuine". (emphasis supplied)

9.2 Yet in Periyar and Pareekanni Rubbers Ltd. vs. State of Kerala AIR 1990 Supreme Court Page 2192, the Supreme Court in paragraph 5 at page 2196 has ruled as under:-

"The underlying principle seeks a fair market value with reference to comparable sales and the art of speculation. In a comparable sales, the features are:

- (1) It must be within a reasonable time of the date of Notification;
- (2) It should be bonafide transaction;
- (3) It should be sale of land acquired or land adjacent to the land acquired; and
- (4) It should possess similar advantages.

These should be established by adduction of material evidence by examination as stated above of the parties to the sale or persons having knowledge of the sale transactions (emphasis supplied). In view of the principles laid down by the Division Benches of this Court and the Supreme Court in Periyar's case (supra), in our opinion, the claimants by examining Jivraj Sundarlal Pandit who was the husband of the vendee had sufficiently proved the sale transaction Exh.145. We may further add that the sale transaction was a bonafide and genuine

transaction which had taken place between a willing purchaser and a willing buyer. The Reference Court had also, while determining the market value of the acquired lands had placed reliance on the sale deed Exh.145 which, in our view, is a correct approach adopted by the Reference Court.

10. The submission of the learned Assistant Government Pleader Mr. Dave that for ascertaining market value of lands having large area, no reliance can be placed on the sale deed relating to small area does not deserve any merit and is hereby rejected. The learned Assistant Government Pleader in support of the submission had placed reliance on the decision of K. Padmanabha Raju and Others vs. Senior Regional Manager, FCI and Others (1996) 10 SCC 613. The facts of the above case were that land admeasuring 33 acres 84 cents of Village Srungavruksham in Bhimavaram Taluk, District West Godavari, Andhra Pradesh was acquired for construction of FCI godowns. While determining the market rent of the above acquired land, the Reference Court had placed reliance on the sale deed admeasuring 5 cents only and determined the market value of the acquired land at the rate of Rs.90,000/- per acre. The Supreme Court deprecated the reliance placed on the sale deed of very small area and observed that when a large extent of land of 33 acres 84 cents was acquired, no willing purchaser could offer to purchase the land at the rate of Rs.90,000/- per acre based on a mere sale deed Exh.A-4 involving 5 cents of land. In our opinion, the decision relied on by the Assistant Government Pleader in K. Padmanabha Raju's case (supra) would not apply to the facts of the present case. The acquired lands in the above case were agricultural lands whereas in the present case, the acquired lands and lands of Sale-deed Exh.145 were non-agricultural and developed lands and further more, the area of the acquired land is not huge as compared to the acquired lands involved in Padmanabha Raju's case (supra). In the present appeal, the land involved is approximately of the total area of 30,000 and odd square metres, divided in 16 plots and the sale deed produced at Exh.145 was of the area of 46.30 square metres. The lands under acquisition and the lands which were the subject matter of sale deed Exh.145 were both non-agricultural and developed lands situated in the same town Santrampur. It would be worth noting that the lands of sale deed Exh.145 were situated in less developed area as compared to the area of Pratappura, where the acquired lands were situated.

10.1 Learned Assistant Government Pleader also

invited our attention to the decision in Land Acquisition Officer, Eluru and Others vs. Jasti Rohini (Smt) and Another (1995) 1 SCC Page 717 wherein the Supreme Court in paragraph 7 at page 722 observed that bonafide sales or series of sales of small pieces of land do not furnish the sole basis to determine market value. In the above case before the Supreme Court, lands admeasuring 9.47 acres and 14.10 acres near Eluru town were acquired for providing house sites to the poor. The Reference Court had placed reliance on the land of very small area comprising of 120 square yards for the determination of market value of the acquired land of that case. In the light of the above facts, the Supreme Court had observed that bonafide sales or series of sales of small pieces of land do not furnish the sole basis to determine market value of the acquired lands. In the case before the Supreme Court, there was no building activities in the neighbourhood and there was no rise in the market condition and since the lands were admittedly agricultural lands, the Supreme Court had determined the market value by deducting 30% for development charges out of Rs.150 per square yards which was the market price of the sale deed covering lands of 120 square yards. In our opinion, before the Supreme Court the lands were agricultural lands and covering huge area whereas in the present case, the lands are non-agricultural and the area of the present acquired land is approximately 30,000 square metre. There is sufficient evidence produced by the claimants in the present case that the acquired lands were situated in a most developed area and the lands were having all the potentialities. Therefore, in our opinion, the reliance on the decision reported in Jasti Rohini's case supra by the learned Assistant Government Pleader will not be of any help to him.

11. In determination of the market value of the present acquired land, the claimants cannot be non suited only on the ground that no sale deed covering large area was produced before the Reference Court. The main anxiety of the authority or court should be to ascertain and find out the fair and just amount of value of the land under acquisition. The mandate of S. 23 of the Act is to see that the affected person in an acquisition proceeding is placed in the same position, as far as possible, as he would have been, had there been no acquisition. So, the ultimate purpose and policy enshrined in S.23 of the Act is to see that the affected person or owner of the property acquired, should get fair and just amount of compensation. The claimants had produced the sale deed Exh.145, though it was in respect of a small area, of a different locality, but it was most



comparable with the acquired lands, having same advantageous features. In our opinion, the claimants had sufficiently proved that the area Pratappur, wherein the acquired lands were situated, was fully developed which had submerged due to waters of Kadana Dam and as a result of compulsory acquisition of the present acquired land, the development had shifted to another locality of the same town namely Godhra Bhagol wherein the lands which were the subject matter of sale deed Exh.145 were situated. In our opinion, the sale deed Exh.145 reflects the prevailing price nearer to the date of the Notification issued under Section 4(1) of the Act and the said sale deed is bonafide and genuinely executed between willing purchaser and willing buyer. We are of the opinion that the Reference Court had not erred in placing reliance on sale deed Exh.145 for the determination of the market value of the present acquired lands. The Land Acquisition Officer had also observed in his award that the sale deed Exh.145 which was in respect of Survey No.1177 of the same Town Santrampur reflected market value in the month of December, 1978 at the rate of Rs.270 per square metre. The award of the Land Acquisition Officer is not evidence stricto sensu but with a view to do substantial justice the court can look into it and consider the material collected therein [See (1997) 9 Supreme Court Cases 628 Land Acquisition Officer & Sub.Collector, Gadwal vs. Sreelatha Bhoopal (Smt.) and another]. The Land Acquisition Officer had observed in his award Ex.2 at paragraph 5 with regard to the description and situation of the acquired lands as under:

"The lands acquired were of the town of Santrampur-City Survey Area. In the town, there was Nagar Panchayat. Being a Taluka Headquarter, offices of all Departments were situated in the town and it was having the facilities of Government Hospital, Arts College, High School, Theatre, ST Depot, Post Office, Electricity, Telegraph Office and Telecom Office. There was facility of water supply from house to house. The main occupation of the population of the town was business. The acquired lands were part and parcel of Santrampur which were included in the development map. City Survey of all the acquired lands were carried out and included in the City Survey area long back. The acquired lands were abutting on the pucca road on northern side meant for Santrampur-Jhalod road. River Suki was on the east and west side. Surrounding the acquired lands, there were residential houses and commercial area was also situated adjoining to

the acquired lands. The acquired lands were situated near the area known as Main Bazaar in Pratappura locality. Near the acquired lands, many residential houses, quarters of Government Officers, guest house were situated. The acquired lands were being utilised as non-agricultural lands. The lands were mostly useful for residences i.e. to say all the lands were having NA potentialities. The lands acquired were of even level and several houses were constructed on some of the plots."

The above description of the acquired lands, as stated in the award of the Land Acquisition Officer, indicated that the acquired lands were fully developed and were having potentialities for residential houses and would have been sold for the said purpose or for establishment of commercial activities.

12. Where a sale deed as an exemplar is only in respect of a smaller area, nevertheless that can be a guide to determine the value of compensation of a comparatively bigger area and where no sale deed of a bigger area is available, then the exemplar of a smaller area can be relied upon keeping in view the potentiality of land. The proposition that a large area of land cannot possibly fetch a price at the same rate at which small plots are sold is not an absolute proposition and in given circumstances, it would be permissible to take into account the price fetched by the small plots of lands. The Supreme Court and this High Court in several cases have laid down the principle that when reliance is placed on sale deed relating to small area for determination of market value of large area, suitable deductions should be made for dividing land into small plots, laying down roads, providing facilities of drainage etc. What deduction should be made will depend upon the facts and circumstances of the acquired land the lands sold having small area (see AIR 1984 Page 892, AIR 1991 SC Page 2481, AIR 1992 SCW Page 2791, (1995) 4 SCC 136, AIR 1998 SC Page 781 and AIR 1991 Gujarat Page 187).

13. However, the learned Senior counsel Mr. Yatin Oza has seriously pressed into service the decision of Bhagwathula Samanna and Others vs. Special Tahsildar and Land Acquisition Officer, Visakhapatnam Municipality, Visakhapatnam (1991) 4 SCC Page 506 = AIR 1992 SC Page 2298 and submitted that the sale value of even a small developed plot of land can form basis for determining value of a large tract of acquired land if it is also fully developed with all facilities for acquiring little

or no further development. In the case before the Supreme Court, the acquired lands were located by the side of National Highway and the Southern Railway Staff Quarters with the Town Planning Trust road on the north. The neighbourhood areas were already developed ones and houses have been constructed and the lands had potential value of being used as building sites. The Supreme Court observed that when the lands were having building potentialities and having advantageous position the High Court should not have applied the principle of deduction. In our opinion, the decision of Bhagwathula Sammana and Others (supra) lays down the principle that for the determination of large area of land compulsorily acquired which was situated in a fully developed area, a sale deed covering small plot of land also situated in developed area can be relied on for the ascertainment of market value of the land having large area in a developed locality. For applying the suitable deduction, the facts and situation of acquired lands of each case has to be taken into consideration. Even if the land covering large area was to be sold to a housing society, the purchaser of large area of land would have to incur expenses of laying down roads, dividing the plots and laying drainages etc. Therefore, a suitable deduction will have to be applied to ascertain the market value of the lands having large area.

13.1 It is a well-recognised principle of valuation of land not to value large numbers of land on the basis of sales of small areas without making suitable deductions from the sale price of small plots of land. If there are no sale-instances of large area, then the Court would not be justified in rejecting the sale instances of a small plot, which is otherwise comparable and having similar advantages as of acquired lands. The courts have only held that for ascertaining the market value of large area suitable deductions and allowances from the sale price of a small plot of land on account of the largeness of the size of the land is to be applied. The number of intending purchasers competing for the purchase of small plots would be fairly greater than that for large plots with the result that the seller of the small plot is likely to obtain a comparatively higher price than a seller of a big plot of land. Therefore, in our opinion, for ascertaining the market value of the present acquired lands if reliance is placed on a sale deed Exh.145 which is in respect of a small area, some deduction shall have to be made. However, counsel for the Government has submitted that a deduction of 53% of the market value of the lands covering sale deed Exh.145 should be made. In our opinion, the submission of the learned counsel cannot

be accepted. What should be the proper deduction will depend on facts and circumstances of each case and no straight jacket formula can be applied. In the present case, acquired lands of Survey No.832 was covering area of 18528 square metre and acquired lands of Survey No.873 was covering the area of 10993 square metre. Admittedly, both the acquired lands of the two Survey Nos. as stated above were non-agricultural lands situated in a developed area of Pratappura wherein commercial activities were carried on at the time of the acquisition. In our opinion, the Reference Court was not justified in applying the deductions on the ground of development charges and secondly on the ground of acquired lands having large area. In our opinion, the Reference Court had erred in applying double deductions from the sale price of sale deed Exh.145. Admittedly, the sale price of sale transaction Exh.145 was Rs.270 per square metre as on December, 1978. The present acquired lands were placed under acquisition by the issuance of the Notification under Section 4(1) of the Act on February 15, 1979. The sale deed Exh.145 was therefore prior to three months of the date of the acquisition. The acquired lands as well as the lands under sale deed Exh.145 were situated in a similarly developed area. The claimants' witness had established that prior to the acquisition, the area of Pratappura was having more development than the area of Godhra Bhagol where the lands of sale deed Exh.145 were situated. Keeping in mind the principles laid down by the Supreme Court in catena of decisions, in our opinion, a deduction of 33% should be applied to the market value of the lands of sale deed Exh.145 for the purpose of determination of the market-value of the present acquire lands having large area. If a deduction of 33% is made to the price of sale deed Exh.145 which was Rs.270/-, the market value of the present acquired lands will be  $\text{Rs.}270 - 90 = \text{Rs.}180/-$  per square metre. We, therefore, determine the market value of the acquired lands of Survey No. 832 admeasuring 18528 square metres and acquired lands of Survey No.873 admeasuring 10993 square metres at the rate of Rs.180/per square metre.

14. Due to compulsory acquisition, total 16 plots belonging to the claimants were acquired. The area of another 14 plots is tabulated as under:-

Sl.No.	C.T.S. No.	Area acquired (in sq.m.)
1. 833	130.00	
2. 838	46.20	
3. 839	35.28	

4.	834		365.56	
5.		857	234.00	
6.	858		47.77	
7.	859		47.97	
8.	860		47.97	
9.	861		46.60	
10.	862		63.18	
11.	840		54.60	
12.	841	42.00		
13.	842	26.40		
14.		843	28.38	
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Total				1215.91

Learned Assistant Government Pleader Mr. S.J. Dave has vehemently submitted that the Reference Court had awarded uniform rate of compensation in respect of the acquired lands having large areas and the acquired lands having small area. Learned Assistant Government Pleader submitted that it is common knowledge that generally land having small area would fetch more price than the land having large area. The learned AGP therefore submitted that the Reference Court ought to have deducted some percentage while awarding compensation for the land having larger area as compared to other lands having smaller area. Learned counsel for the Government, therefore, submitted that when the Reference Court had determined the market value of the acquired land at the rate of Rs.134/- per square metre, then it ought to have determined the market value of the acquired land having large area by deducting 50% from the price of the lands having small area. Learned Assistant Government Pleader, in support of his submission, has placed reliance on the decision of M/s. Printers House Private Ltd. vs. Mst. Saiyadan (Deceased) by L.R.s and others AIR 1994 Supreme Court Page 1160. In the case before the Supreme Court, lands admeasuring 12 acres 3 kanals and 4 marlas were acquired for the company namely M/s. Printers House Pvt. Ltd. for setting up of its factory for the purpose of manufacture of printing machinery. The acquired lands comprised of 8 kanals 6 marlas (5020.50 sq. yds.) and 1 kanal 19 marlas (1179.75 sq. yds.) of lands owned by Mst. Saiyadan, 9 kanals 2 marlas (5505.50 sq. yds.) and 6 kanals 15 marlas (4083.75 sq. yds.) of lands owned by Messrs. Cold Storage and Food Products and 73 kanals 2 marlas (44225.50 sq. yds.) of lands owned by the Masjid of Village Ranhera. An argument was advanced before the Apex Court that the determination of price of the acquired lands could not have been determined at a uniform rate irrespective of the difference in location, shape, size, potentiality or tenure of one plot of

acquired land which widely differed from the other plots of acquired lands. The Apex Court dealing with the above argument in paragraph 8 at page 1164 observed as under:

"If any of the factors, such as, location, shape, size, potentiality or tenure of one plot of acquired land widely differs from the other plot(s) of acquired land(s), then the market-value of each plot of land acquired has to be determined independently of the other(s) even if all of them had been acquired pursuant to the same preliminary notification. The reason is not far to seek since the differential factors relating to different acquired plots greatly affect their value. Hence, if any salient factor of different acquired plots of land, which greatly affects their value is ignored or is not taken into consideration by the Court while determining the market-value of acquired lands, it will have failed to apply the correct principle of valuation adoptable in valuation of different types of acquired lands."

Again in paragraph 13 at page 1166, the Supreme Court observed as under:

"Thus, when the evidence in the case clearly established that the different plots of lands of three claimants acquired, varied greatly as to their sizes, shapes and location (situation) they could not have fetched a uniform rate, if the same had been sold in the open market by each of the claimants. That being the correct position, two learned Judges of the High Court did err on a principle of valuation applicable to valuation of different types of acquired land, when they by their judgments under present appeals determined the market-value of almost all the acquired plots of lands at a uniform rate, on the wrong assumption that all the 5 plots of acquired lands could have fetched the same rate if sold in the open market."

If the submission of the learned Assistant Government Pleader, in our opinion, is accepted then the market value of 14 plots of acquired land having small area would be more than the price determined in respect of the acquired lands two Survey Nos. i.e. CTS Nos.832 and 837, which were having large area. The evidence of claimant Barjorbhai Contractor Exh.30 shows that on the acquired lands, many houses were constructed out of which

about 70% were having pucca structure whereas 30% were having kutcha structure. The Land Acquisition Officer had offered market price of the areas of the acquired lands having small area at the rate of Rs.60/per square metre as compared to the market price offered for the lands having larger area at the rate of Rs.35/per square metre. This also indicates that the Land Acquisition Officer had offered more price for the lands having small area. If the above referred to 14 plots having small area were sold in open market, it would have fetched more price than the acquired lands of City Survey Nos. 832 and 837 which were comprising of large area. The 14 plots were having distinguishing features of roads, drainage, electricity etc. Therefore, the market value of the above referred to plots having small area shall have to be determined at a higher rate than the plots having large area. As we have already determined the market price of the larger area at the rate of Rs.180/per square metre, in our opinion, the acquired lands which are having small area consisting of 14 plots, as mentioned earlier, the market value of the above lands having small area can be determined by applying 25% deduction to the market price of the sale deed Exh.145 which has been made basis for the determination of the market value of the present acquired lands. If 25% deduction is made from the market price of sale deed Exh.145, the market price of the above quoted 14 plots having small area would be  $\text{Rs.270} - 67.50 = \text{Rs.202.50/-}$ . As the claimant at the initial stage had only claimed compensation of the acquired land at the rate of Rs.200/per square metre, we determine market value of the lands having small area comprising of 14 plots at the rate of Rs.200/per square metre. In our opinion, the determination of market value at the rate of Rs.200/- per square metre of 14 plots, admeasuring 1215.91 square metres as mentioned above, having small area would be just adequate and reasonable looking to the situation and potentiality of the acquired lands having small area.

15. As a result of the above stated reasons, the appeal filed by the State of Gujarat i.e. First Appeal No.323 of 2000 is dismissed. The appeal filed by the claimants being First Appeal No.106 of 2000 is partly allowed. The market price of the acquired lands having large area bearing Survey No.832 admeasuring 18528 square metres and Survey No.873 having area of 10993 square metres is determined at the rate of Rs.180/per square metre. The market price of the acquired lands of 14 plots having smaller area bearing Survey No.833, 838, 839, 834, 857, 858, 859, 860, 861, 862, 840, 841, 842 and 843 admeasuring 1215.91 square metres is determined at

the rate of Rs.200/- per square metre on the relevant date i.e. February 15, 1979. The award of the Reference Court shall stand modified to the extent indicated above. As the award of the Land Acquisition Officer was made prior to coming into force of the amended Act of 1984, the claimant shall not be entitled to the benefit under Section 23(1-A) of the Act. However, the claimants shall be entitled to solatium at the rate of 30% on the amount of compensation as per the provisions of Section 23(2) of the Act as well as interest under amended provision of Section 28 of the Act. However, it is clarified that the claimants shall not be entitled to interest on the amount of solatium as per the decision of the Supreme Court in Prem Nath Kapur and another vs. National Fertilizers Corporation of India Limited and others (1996) 2 SCC Page 71. No orders are passed on Civil Application No.3333 of 2000 filed by the State of Gujarat for stay of the execution and implementation of the impugned judgment and award of the Reference Court rendered in Land Acquisition Reference No. 7 of 1985 as First Appeal No. 323 of 2000 is dismissed. The amount of compensation deposited in this court which is invested in Cumulative Fixed Deposit pursuant to the order passed in Miscellaneous Civil Application No. 465 of 1997 dated 18.03.1997 shall be transmitted to the Reference Court and shall be taken into consideration while quantifying the amount to be deposited by the State of Gujarat pursuant to this judgment.

16. The possession of the acquired lands was taken way back in the year 1978 and the claimants have not been paid their dues in full. Therefore, we direct the State of Gujarat to deposit the awarded amount of compensation including the statutory benefits under the Act in the Reference Court within four months from today. The office is directed to draw decree in terms of this judgment.

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